

Editor's Note

Above the Law? Disagreement Over Agreements

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Wouldn't it be great to draft, and implement, your own policies that trump the law?

"Sorry, officer, but I have an agreement with the owner of this car that allows me to exceed speeds of 100 mph."

"Nope, judge, you can't send the police into my apartment with a search warrant – my lease agreement allows me to pick and choose who is allowed in."

"Go pound sand, health inspector – my employment contract between me, the chef, and the restaurant gives me control over the kitchen, and that means preparing month-old botulism-stuffed chicken, if I want."

More and more government agencies are making up information access rules to suit their needs, hiding civic data from the public.

Florida, Kentucky, Louisiana, Minnesota, and other states deny the public access to infection health data, saying data use agreements with the National Healthcare Safety Network do not authorize the sharing of information with the public. Some agencies attempt to enter into non-disclosure agreements to hide settlements with aggrieved parties.

Often, government agencies enter into public-private partnerships, hiding records behind trade secret exemptions to [protect proprietary data](#), a practice upheld in the 2019 U.S. Supreme Court case *Food Marketing Institute v. Argus Leader Media*, a significant problem outlined by Daxton "Chip" Stewart and Amy Kristin Sanders in a 2019 [Journal of Civic Information article](#).

The city of Winter Garden, Florida, passed a resolution [prohibiting reporters](#) from asking questions during public meetings, and from following commissioners after meetings to seek comment. Violators may be banned from future public meetings.

The Allegheny (Pennsylvania) County Bureau of Corrections [implemented policies](#) that prohibit employees from talking to the media without approval from the warden, and any employee violating the policy could be disciplined or fired.

In this issue of the *Journal of Civic Information*, A.Jay Wagner, an associate professor at Marquette University, highlights another technique for hiding public information behind law-trumping agreements: police departments providing crime data to commercial mapping companies.

Many police departments provide their crime incident data – all public under the law – to companies that then provide the data to the public online.

The agencies grant the companies the ability to control dissemination of that information, including denying it to anyone else who asks. Some companies' terms of use prohibit people from copying the data – claiming proprietary ownership. Or they might claim they own the copyright to what are clearly public records available to anyone under state public record laws.

This is problematic, and Wagner lays out some potential solutions.

If a government record is public under state or federal law, then any policy, agreement, or resolution cannot trump that law. Exemptions within the law might apply, but the law is the determining factor, not the wishes of an agency or private company contracting with an agency.

As far as I know, I still cannot drive 100 mph on the interstate, and that is probably a good thing for the public.

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